

**SERIAL 07089 RFP STANDBY POWER SYSTEM MAINTENANCE CONSOLIDATION
PROGRAM**

DATE OF LAST REVISION: February 06, 2008 CONTRACT END DATE: February 28, 2009

CONTRACT PERIOD THROUGH FEBRUARY 28, 2009

TO: All Departments
FROM: Department of Materials Management
SUBJECT: Contract for **STANDBY POWER SYSTEM MAINTENANCE CONSOLIDATION
PROGRAM**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by Maricopa County on **February 06, 2008 (Effective 3/01/08)**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.

Wes Baysinger, Director
Materials Management

CH/mm
Attach

Copy to: Clerk of the Board
Richard Crago, Facilities Management
Materials Management



CONTRACT PURSUANT TO RFP

SERIAL 07089-RFP

This Contract is entered into this sixth day of February, 2008 by and between Maricopa County ("County"), a political subdivision of the State of Arizona, and **FM Solutions, Inc.**, an Arizona corporation ("Contractor") for the development of a standby power systems maintenance consolidation program as described herein.

1.0 TERM

- 1.1 This Contract is for a term of one (1) year, beginning on the first day of March, 2008 and ending the twenty-eighth day of February, 2009.
- 1.2 The County may, at its option and with the agreement of the Contractor, extend the period of this Contract for additional terms up to a maximum of five (5) years, (or at the County's sole discretion, extend the contract on a month to month basis for a maximum of six (6) months after expiration). The County shall notify the Contractor in writing of its intent to extend the Contract period at least thirty (30) calendar days prior to the expiration of the original contract period, or any additional term thereafter.

2.0 PAYMENT

- 2.1 As consideration for performance of the duties described herein, County shall pay Contractor the sum(s) stated in Exhibit "A."
- 2.2 Payment shall be made upon the County's receipt of a properly completed invoice. Invoices shall contain the following information: Contract number, purchase order number, item numbers, description of supplies and/or services, sizes, quantities, unit prices, extended totals and any applicable sales/use tax.

2.3 INVOICES AND PAYMENTS:

- 2.3.1 **The Contractor shall submit two (2) legible copies of their detailed invoice before payment(s) can be made. At a minimum, the invoice must provide the following information:**

- 2.3.1.1 Company name, address and contact
- 2.3.1.2 County bill-to name and contact information
- 2.3.1.3 Contract Serial Number
- 2.3.1.4 County purchase order number
- 2.3.1.5 Invoice number and date
- 2.3.1.6 Payment terms
- 2.3.1.7 Date of service or delivery
- 2.3.1.8 Quantity (number of days or weeks)
- 2.3.1.9 Contract Item number(s)
- 2.3.1.10 Description of Purchase (product or services)
- 2.3.1.11 Pricing per unit of purchase
- 2.3.1.12 Freight (if applicable)
- 2.3.1.13 Extended price

- 2.3.1.14 Mileage w/rate (if applicable)
- 2.3.1.15 Arrival and completion time (if applicable)
- 2.3.1.16 Total Amount Due

Problems regarding billing or invoicing shall be directed to the using agency as listed on the Purchase Order.

- 2.3.2 Payment will be made to the Contractor by Accounts Payable through the Maricopa County Vendor Express Payment Program. This is an Electronic Funds Transfer (EFT) process. After Award the Contractor shall fill out an EFT Enrollment form (to be provided by the Procurement Officer) or as located on the County Department of Finance Website as a fillable PDF document (www.maricopa.gov/finance/).
- 2.3.3 EFT payments to the routing and account numbers designated by the Contractor will include the details on the specific invoices that the payment covers. The Contractor is required to discuss remittance delivery capabilities with their designated financial institution for access to those details.

3.0 DUTIES

- 3.1 The Contractor shall perform all duties stated in Exhibit "B."
- 3.2 The Contractor shall perform services at the location(s) and time(s) stated in Exhibit "B," or as otherwise directed in writing.
- 3.3 During the Contract term, County shall provide Contractor's personnel with adequate workspace for consultants and such other related facilities as may be required by Contractor to carry out its contractual obligations.

4.0 TERMS & CONDITIONS

4.1 INDEMNIFICATION:

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless County, its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expenses, including, but not limited to, attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, omissions or mistakes relating to the performance of this Contract. Contractor's duty to defend, indemnify and hold harmless County, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, including loss of use resulting there from, caused by any negligent acts, errors, omissions or mistakes in the performance of this Contract including any person for whose acts, errors, omissions or mistakes Contractor may be legally liable.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

The scope of this indemnification does not extend to the sole negligence of County.

4.2 INSURANCE REQUIREMENTS:

Contractor, at Contractor's own expense, shall purchase and maintain the herein stipulated minimum insurance from a company or companies duly licensed by the State of Arizona and possessing a current A.M. Best, Inc. rating of B++6. In lieu of State of Arizona licensing, the stipulated insurance may be purchased from a company or companies, which are authorized to do business in the State of Arizona, provided that said insurance companies meet the approval of County. The form of any insurance policies and forms must be acceptable to County.

All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of County, constitute a material breach of this Contract.

Contractor's insurance shall be primary insurance as respects County, and any insurance or self-insurance maintained by County shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect the County's right to coverage afforded under the insurance policies.

The insurance policies may provide coverage that contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to County under such policies. Contractor shall be solely responsible for the deductible and/or self-insured retention and County, at its option, may require Contractor to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

County reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. County shall not be obligated, however, to review such policies and/or endorsements or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of County's right to insist on strict fulfillment of Contractor's obligations under this Contract.

The insurance policies required by this Contract, except Workers' Compensation, and Errors and Omissions, shall name County, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

The policies required hereunder, except Workers' Compensation, and Errors and Omissions, shall contain a waiver of transfer of rights of recovery (subrogation) against County, its agents, representatives, officers, directors, officials and employees for any claims arising out of Contractor's work or service.

Contractor is required to procure and maintain the following coverages indicated by a checkmark:

4.2.1 Commercial General Liability.

Commercial General Liability insurance and, if necessary, Commercial Umbrella insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products/Completed Operations Aggregate, and \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage, and shall not contain any provision which would serve to limit third party action over claims. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

4.2.2 Automobile Liability.

Commercial/Business Automobile Liability insurance and, if necessary, Commercial Umbrella insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any of the Contractor's owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work or services under this Contract.

4.2.3 Workers' Compensation.

Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services under this Contract; and Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit. (N.B. - \$1,000,000 limits on larger contracts)

Contractor waives all rights against County and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Workers' Compensation and Employer's Liability or commercial umbrella liability insurance obtained by Contractor pursuant to this Contract.

4.2.4 Certificates of Insurance.

4.2.4.1 Prior to commencing work or services under this Contract, Contractor shall furnish the County with certificates of insurance, or formal endorsements as required by the Contract in the form provided by the County, issued by Contractor's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Contract are in full force and effect. Such certificates shall identify this contract number and title.

If a policy does expire during the life of the Contract, a renewal certificate must be sent to County fifteen (15) days prior to the expiration date.

4.2.4.2 Cancellation and Expiration Notice.

Insurance required herein shall not be permitted to expire, be canceled, or materially changed without thirty (30) days prior written notice to the County.

4.3 INTERNET ORDERING CAPABILITY:

It is the intent of Maricopa County at its option, to utilize the Internet to place orders under this Contract.

4.4 NOTICES:

All notices given pursuant to the terms of this Contract shall be addressed to:

For County:

Maricopa County
Department of Materials Management
Attn: Director of Purchasing
320 West Lincoln Street
Phoenix, Arizona

For Contractor:

Curtis S. Slife
4001 N. 3rd Street, Suite 250
Phoenix, 85012

4.5 REQUIREMENTS CONTRACT:

4.5.1 Contractor signifies its understanding and agreement by signing this document that this Contract is a requirements contract. This Contract does not guarantee any purchases will

be made (minimum or maximum). Orders will only be placed when County identifies a need and issues a purchase order or a written notice to proceed.

4.5.2 County reserves the right to cancel purchase orders or notice to proceed within a reasonable period of time after issuance. Should a purchase order or notice to proceed be canceled, the County agrees to reimburse the Contractor for actual and documented costs incurred by the Contractor. The County will not reimburse the Contractor for any avoidable costs incurred after receipt of cancellation, or for lost profits, or shipment of product or performance of services prior to issuance of a purchase order or notice to proceed.

4.5.3 Contractor agrees to accept oral cancellation of purchase orders.

4.6 **PRICE ADJUSTMENTS:**

Any requests for reasonable price adjustments must be submitted sixty (60) days prior to the Contract expiration date. Requests for adjustment in cost of labor and/or materials must be supported by appropriate documentation. If County agrees to the adjusted price terms, County shall issue written approval of the change. The reasonableness of the request will be determined by comparing the request with the (Consumer Price Index) or by performing a market survey.

4.7 **TERMINATION FOR CONVENIENCE:**

The County reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the County without penalty or recourse. Upon receipt of the written notice, the Contractor shall immediately stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the County. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the County upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination.

4.8 **TERMINATION FOR DEFAULT:**

4.8.1 In addition to the rights reserved in the Contract, the County may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

4.8.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the County on demand.

4.8.3 The County may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the County for any excess costs incurred by the County in procuring materials or services in substitution for those due from the Contractor.

4.8.4 The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

4.9 **STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:**

Notice is given that pursuant to A.R.S. §38-511 the County may cancel this Contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County is at any time while the Contract or any extension of the Contract is in effect,

an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S §38-511 the County may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County from any other party to the contract arising as the result of the Contract.

4.10 OFFSET FOR DAMAGES;

In addition to all other remedies at law or equity, the County may offset from any money due to the Contractor any amounts Contractor owes to the County for damages resulting from breach or deficiencies in performance under this contract.

4.11 ADDITIONS/DELETIONS OF SERVICE:

The County reserves the right to add and/or delete products and/or services provided under this Contract. If a requirement is deleted, payment to the Contractor will be reduced proportionately to the amount of service reduced in accordance with the proposal price. If additional services and/or products are required from this Contract, prices for such additions will be negotiated between the Contractor and the County.

4.12 SUBCONTRACTING:

The Contractor may not assign this Contract or subcontract to another party for performance of the terms and conditions hereof without the written consent of the County, which shall not be unreasonably withheld. All correspondence authorizing subcontracting must reference the Proposal Serial Number and identify the job project.

4.13 AMENDMENTS:

All amendments to this Contract shall be in writing and approved/signed by both parties. Maricopa County Materials Management shall be responsible for approving all amendments for Maricopa County.

4.14 RETENTION OF RECORDS:

The Contractor agrees to retain all financial books, records, and other documents relevant to this Contract for five (5) years after final payment or until after the resolution of any audit questions which could be more than five (5) years, whichever is longer. The County, Federal or State auditors and any other persons duly authorized by the Department shall have full access to, and the right to examine, copy and make use of, any and all said materials.

If the Contractor's books, records and other documents relevant to this Contract are not sufficient to support and document that requested services were provided, the Contractor shall reimburse Maricopa County for the services not so adequately supported and documented.

4.15 AUDIT DISALLOWANCES:

If at any time, County determines that a cost for which payment has been made is a disallowed cost, such as overpayment, County shall notify the Contractor in writing of the disallowance. County shall also state the means of correction, which may be but shall not be limited to adjustment of any future claim submitted by the Contractor by the amount of the disallowance, or to require repayment of the disallowed amount by the Contractor.

4.16 ALTERNATIVE DISPUTE RESOLUTION:

4.16.1 After the exhaustion of the administrative remedies provided in the Maricopa County Procurement Code, any contract dispute in this matter is subject to compulsory arbitration. Provided the parties participate in the arbitration in good faith, such arbitration is not binding and the parties are entitled to pursue the matter in state or

federal court sitting in Maricopa County for a de novo determination on the law and facts. If the parties cannot agree on an arbitrator, each party will designate an arbitrator and those two arbitrators will agree on a third arbitrator. The three arbitrators will then serve as a panel to consider the arbitration. The parties will be equally responsible for the compensation for the arbitrator(s). The hearing, evidence, and procedure will be in accordance with Rule 74 of the Arizona Rules of Civil Procedure. Within ten (10) days of the completion of the hearing the arbitrator(s) shall:

4.16.1.1 Render a decision;

4.16.1.2 Notify the parties that the exhibits are available for retrieval; and

4.16.1.3 Notify the parties of the decision in writing (a letter to the parties or their counsel shall suffice).

4.16.2 Within ten (10) days of the notice of decision, either party may submit to the arbitrator(s) a proposed form of award or other final disposition, including any form of award for attorneys' fees and costs. Within five (5) days of receipt of the foregoing, the opposing party may file objections. Within ten (10) days of receipt of any objections, the arbitrator(s) shall pass upon the objections and prepare a signed award or other final disposition and mail copies to all parties or their counsel.

4.16.3 Any party which has appeared and participated in good faith in the arbitration proceedings may appeal from the award or other final disposition by filing an action in the state or federal court sitting in Maricopa County within twenty (20) days after date of the award or other final disposition. Unless such action is dismissed for failure to prosecute, such action will make the award or other final disposition of the arbitrator(s) a nullity.

4.17 SEVERABILITY:

The invalidity, in whole or in part, of any provision of this Contract shall not void or affect the validity of any other provision of this Contract.

4.18 RIGHTS IN DATA:

The County shall own have the use of all data and reports resulting from this Contract without additional cost or other restriction except as provided by law. Each party shall supply to the other party, upon request, any available information that is relevant to this Contract and to the performance hereunder.

4.19 INTEGRATION:

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, proposals, communications, understandings, representations, or agreements, whether oral or written, express or implied.

4.19.1 The following are attached to, and made a part of this Contract:

Exhibit A	Pricing
Exhibit B	Scope of Work

4.20 GOVERNING LAW:

This Contract shall be governed by the laws of the state of Arizona. Venue for any actions or lawsuits involving this Contract will be in Maricopa County Superior Court or in the United States District Court for the District of Arizona, sitting in Phoenix, Arizona

IN WITNESS WHEREOF, this Contract is executed on the date set forth above.

CONTRACTOR



AUTHORIZED SIGNATURE



PRINTED NAME AND TITLE



ADDRESS



DATE

MARICOPA COUNTY

BY: _____
DIRECTOR, MATERIALS MANAGEMENT

DATE

BY: 

CHAIRMAN, BOARD OF SUPERVISORS

MAR 04 2008

DATE

ATTESTED:




CLERK OF THE BOARD

020608

MAR 04 2008

DATE

APPROVED AS TO FORM:



DEPUTY MARICOPA COUNTY ATTORNEY



DATE

**EXHIBIT A
PRICING**

PRICING SHEET: **NIGP CODE: 9181901, 9184201**

Bidder Name: FM Solutions, Inc.
Vendor # : W000002592 X
Bidder Address: 4001 N. 3rd Street, Suite 250
P.O. Address:
Bidder Phone #: 602 265 7900
Bidder Fax #: 602 265 9477
Company Web Site: jstrecker@facilitize.com
Company Contact (Rep): Curtis Slife
E-Mail Address (Rep): cslife@facilitize.com

Terms: Net 20

1.0 TOTAL PRICE \$382,675

EXHIBIT B SCOPE OF WORK

1.0 SCOPE OF WORK:

- 1.1 Develop a process and carry out the inventory of Maricopa County's current emergency generators and UPS systems by building/location. The inventory should include related inverters, automatic transfer switches, and all other ancillary equipment comprising Maricopa County's Emergency Standby Power Systems (ESPS). Define which systems support Life/safety or mission critical items.
- 1.2 Develop requirements, processes, performance measurement metrics, and anticipated budgets and personnel requirements for an economical and efficient consolidation within FMD of the County ESPS systems' maintenance programs. The budget should be created on a fiscal year format, for five consecutive fiscal years including estimated price escalation.
 - 1.2.1 Develop acceptance criteria for transitioning equipment to ESPS Maintenance Program. Present plans are to transition all generators and UPS equal or greater than 7 KVA at 120 volts or an equivalent voltage to amperage ratio.
 - 1.2.2 Work with Maricopa County FMD to establish a standard to:
 - 1.2.2.1 Classify ESPS system components by NFPA level 1 or 2.
 - 1.2.2.2 Set the regulatory testing requirements and frequencies by NFPA 1 or 2.
 - 1.2.2.3 Identify the appropriate PM tasks, and the required intervals.
 - 1.2.2.4 Develop a process for remaining current with changes related to technology, testing, and or maintenance improvements keeping standard up-to-date.
 - 1.2.3 Develop process to coordinate current and future:
 - 1.2.3.1 Inventory of equipment to be transitioned to the program and/or added in the future.
 - 1.2.3.2 Evaluate the current operational condition of each type of major system.
 - 1.2.3.3 Identify whether equipment meets the Maricopa County FMD acceptance criteria for transitioning the equipment to the program.
 - 1.2.3.3.1 Itemize existing deficiencies with Not-To-Exceed costs to repair or replace by building\facility.
 - 1.2.3.4 Prioritize and estimate testing and commissioning costs to establish:
 - 1.2.3.4.1 Current maintenance adequacy and annual maintenance budget estimate.
 - 1.2.3.4.2 Age and life-expectancy assessment.
 - 1.2.3.4.3 Capital renewal schedule and budget estimates for a five year period.
 - 1.2.3.5 Review status of existing ESPS systems' documentation and estimate costs to:
 - 1.2.3.5.1 Identify and update inventory of all applicable ESPS systems.
 - 1.2.3.5.2 Redline/as-built one-lines by system/facility.
 - 1.2.3.5.3 Update drawings from redlines.
 - 1.2.3.5.4 Evaluate compliance of systems with current codes/standards and provide cost to bring equipment to standard.

- 1.2.3.5.5 Review existing County contracts for emergency generators and UPS system maintenance to ensure they are in compliance with all code requirements and provide detailed updates as necessary.
 - 1.2.4 Provide job descriptions, qualifications, and estimate the number of ESPS Maintenance Program personnel to support program, at a minimum to include:
 - 1.2.4.1 FMD ESPS Maintenance Program Administrator.
 - 1.2.4.2 ESPS Maintenance Program contractor and/or in-house technicians.
- 1.3 DELIVERABLES:
 - 1.3.1 Emergency Generators/UPS System accountability: Inventory present ESPS systems in all county facilities and create a master list of all equipment to include location, age, and condition, cost estimates with description to bring equipment to code standard and replacement costs, of all current equipment. The inventory shall also define which systems support Life, Safety or Mission Critical requirements. Provide current schematic/Redline drawings for each generator and major building UPS system. Process map to classify ESPS systems by NFPA 1 or 2.
 - 1.3.2 Emergency Generators/UPS System evaluation: Evaluate present ESPS systems to determine if they are the best possible solution to meet the needs of the county on a building by building basis. Identify systems that need replacement, upgrade, or repair. Map recommendations.
 - 1.3.3 Emergency Generators/UPS System maintenance: Provide detailed language spelling out modifications to existing maintenance agreements to ensure they meet code, industry standards and best practices. Process map that conforms existing and future ESPS equipment. Identify regulatory maintenance levels. Establish appropriate PM tasks and frequency requirements for future County maintenance & repair contract documents. Provide written ESPS Maintenance & Repair Program equipment transition acceptance criteria.
 - 1.3.4 Emergency Generators/UPS System Resource requirements: Provide written job descriptions, qualifications for each personnel classification needed to manage and perform the requirements of the consolidated ESPS Maintenance & Repair Program. Provide facility and environmental requirements for ESPS systems presently deployed.
 - 1.3.5 Provide a five year cost estimate for the maintenance and capital cost to reflect recommendations of the final report. The cost estimates shall be broken out by building\location.
 - 1.3.6 Develop standardization recommendations for design, installation and equipment specifications for both new construction and capital replacement with the goal of standardizing equipment, increasing reliability and reducing replacement parts inventory.

FM SOLUTIONS, INC., 4001 N. 3RD STREET, STE 250, PHOENIX, AZ 85012

PRICING SHEET: NIGP CODES: 9181901, 9184201

Terms:	Net 20
Vendor Number:	W000002592 X
Telephone Number:	602-265-7900
Fax Number:	602-265-9477
Contact Person:	Curtis Slife
E-mail Address:	cslife@facilitize.com
Certificates of Insurance	Required
Contract Period:	To cover the period ending February 28, 2009.